

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 700 CUTTACK, FRIDAY, MAY 29, 2009 / JAISTHA 8, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th May 2009

No. 4142—li/1(B)-67/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th March 2009 in Industrial Dispute Case No. 2 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Shri Pitabas Mishra, Proprietor and Publisher Utkal Mail, C/23-1, Industrial Estate, Rourkela-769 004 and its Workman Shri Maheswar Rath, State Level Correspondent "Utkal Mail", Qrs. No. IV-B-51/1, Unit-3, Kharabelanagar, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 2 OF 1999

Dated the 13th March 2009

Present:

Shri P. C. Mishra, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between:

Shri Pitabasa Mishra .. First Party—Management
Proprietor and Publisher, "Utkal Mail"
C/23-1, Industrial Estate
Rourkela—769 004.

And

Shri Maheswar Rath, .. Second Party—Workman
State Level Correspondent
"Utkal Mail", Qtrs. No. IV-B-51/1
Unit-3, Kharabelanagar, Bhubaneswar
Orissa.

Appearances :

For the First Party—Management	.. Shri Pitabasa Mishra, Proprietor.
For the Second Party—Workman	.. Shri Sudarsan Mohapatra, Authorised Representative.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of power conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 15585—li/1(s)-67/1998-L.E., dated the 31st December, 1998 :—

“Whether the termination of services with effect from the 28th April 1997 of Shri Maheswar Rath, Journalist by the Management of M/s Utkal Mail, Rourkela is legal and justified ? If not, to what Shri Rath is entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workman’) in brief is that being appointed as a State Level Correspondent under the Utkal Mail, Rourkela (hereinafter referred to as the ‘Management’) vide order of appointment, dated the 24th December 1991, he was posted at Bhubaneswar with a consolidated salary of Rs. 1,500 per month which was much less than the Bachhawat Wage Board Scales of Pay. According to the workman, he accepted the said salary on getting an assurance from the management that he would be paid as per the Wage Board Scales of Pay after six months. It is pleaded that when the management did not fulfil its assurance in the matter of raising his salary, he redressed his grievance before the D. L.O., Khurda but the management instead of taking any initiative on the claim requested the State Government to withdraw the accreditation facility from the workman and ultimately terminated his service with effect from the 28th April 1997 without serving any notice. It is stated that on reviewing the performance of the workman, the management of its own requested the State Government to confer accreditation to the workman and accordingly declared him as an accredited State Level Correspondent. Challenging the action of the management, it is pleaded that the same is illegal as well as unjustified because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act and accordingly, he has prayed for his reinstatement in service with full back wages.

3. The management entered contest and filed its written statement asserting therein *inter alia* that there is absolutely no employer-employee relationship between the parties and further the claimant is not a ‘workman’ as defined under Section 2 (s) of the Industrial Disputes Act. The specific stand of the management is that no order of appointment was issued to the second party workman and he having voluntarily abandoned the job, the question of termination of his service does not arise at all. According to it, since there has been no termination of service of the workman, as alleged, compliance of the provisions of Section 25-F of the Industrial Disputes Act was not at all required. With the aforesaid averments, the management has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the only issue which have been framed in this case is :—

ISSUES

(1) “Whether the termination of services with effect from the 28th April 1997 of Shri Maheswar Rath, Journalist by the Management of M/s Utkal Mail, Rourkela is legal and justified ? If not, to what relief Shri Rath is entitled ?”

5. Earlier due to non-participation of the management in hearing of the dispute, it was set *ex parte* and accordingly an *ex parte* Award was passed by this Tribunal on the 28th March 2006. Subsequently, on a restoration being filed by the management, it was afforded opportunity to participate in the hearing. After the case was restored, the workman filed a petition stating that besides the statement which he had given on *ex parte* on the 10th January 2006, he had no more evidence to be adduced in the case.

6. It reveals that in order to substantiate their respective case, the workman while examined himself and got marked documents which have been exhibited in this case as Exts. 1 to 10, the management examined two witnesses on its behalf but did not produce any documentary evidence.

7. Though the maintainability of the reference has been challenged by the management on the ground that no employer-employee relationship subsists between it and the workman and further the second party is not a ‘workman’ as per the provisions of Section 2(s) of the Industrial Disputes Act, but no evidence is forthcoming from the side of the management to substantiate the stand. Rather, the documentary evidence particularly Exts. 1, 4, 5 and 6 produced by the workman negatives the plea of the management. For the reasons, therefore, much analysis on the point is found irrelevant and consequently it is held that the reference is maintainable.

8. Now coming to the main issue regarding termination of service of the workman, it is found that while the workman asserts that the action of the management is an act of retrenchment, the management opposing the claim asserts it to be an act of voluntary abandonment of job by the workman.

In this connection, the evidence of W. W. No. 1 discloses that as per his order of appointment Ext. 1 he joined as a State Level Correspondent and considering his performance the management recommended his name to the State Government for conferring him accreditation as per Ext. 2, Exts. 4 and 5 are the documents which prove beyond doubt that he was working with the management concern as a State Level Correspondent. It is in his evidence that soon after his raising the claim as per Ext. 3 for higher salary as per the Wage Board Scale on the 22nd March 1997, the management requested the State Government for cancellation of his accreditation and pursuant to that the Government vide Ext. 7 cancelled his accreditation. He deposed that in spite of his rendering regular service for about six years, the management removed him from service with effect from the 23rd April 1997. He deposed that while in service, he was never charge-sheeted for any misconduct and further while removing him from service, no notice/notice pay and retrenchment compensation was given. Though W. W. No. 1 was cross-examined at length, but nothing was elicited from him to discredit his version.

As it appears, the management only with a view to bring the relationship of the workman with the employer has examined the two witnesses M. Ws. 1 and 2. Both of them stated that the workman was not covered under the E. S. I. and E. P. F. Scheme and thus he cannot be treated as an employee of the management. The evidence adduced does not in any way help the management, inasmuch as, non-inclusion of the name of the workman in the E.S.I. and E.P.F. Scheme and the fact that he was a relation of the employer cannot take away the right of the workman to be noticed/paid notice pay and retrenchment compensation for the alleged termination of his service.

9. The evidence of W. W. No. 1 having not been shaken in any manner, it is held that he was working with the management as a State Level Correspondent and consequently, he was conferred with accreditation to function as such. It is further held that for his rendering regular service under the management for about six years obviously, he was entitled to the protection envisaged under Section 25-F of the Industrial Disputes Act. Since the management has failed to exhibit any documentary proof that it had complied with the provisions of Section 25-F of the Industrial Disputes Act while doing away with the services of the workman, it is held that such action of the management is not at all sustainable in the eye of law and consequently, it is held to be illegal and unjustified.

10. In the result, therefore, the workman is held entitled to reinstatement in service forthwith. But, as regards back wages, since there is nothing either in the pleading or in the evidence of the workman that during the period of his unemployment, he was not gainfully employed elsewhere, he is not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
13-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
13-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government